Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Waiver of Section 15.117	)	Docket No. ET 10-____
Of the Commission's Rules to Permit the	)	
Manufacture, Importation, Marketing, Distribution	)	
and Sale of Digital Only Television Receivers for	)	
Mobile Devices	)	
	)	

Petition for Waiver

In accordance with Section 1.3 of the Commission's Rules, Hauppauge Computer Works, Inc. ("Hauppauge"), by its attorneys, hereby submits this petition for waiver of Section 15.117 of the Commission's Rules to permit the unrestricted manufacture, importation, marketing, distribution and sale of *mobile* television receivers (such as for cell phones, personal digital assistants (PDAs), notebooks and laptop computers) that contain digital only tuners.

We note, in this respect, a similar petition filed by Dell Inc. and LG Electronics USA, Inc. on May 12, 2010 ("Dell/LG Petition"). The instant petition supports the Dell/LG submission and presents additional arguments to justify universal applicability of a waiver of Rule 15.117 in the circumstances described. Hauppauge has no objection if the Commission desires to combine the two petitions into a single proceeding.

I. Introduction

Hauppauge manufactures TV tuners and related products for inclusion in television "receivers" for both domestic and international distribution and sale which are purchased by companies such as Dell and LG. Since the Dell/LG Petition adequately describes the historical

development of digital television in the United States, and the very limited utilization of analog broadcast frequencies today, Hauppauge will not overburden the Commission with a presentation of repetitive facts.

On the other hand, Hauppauge emphasizes the critical importance of a prompt and unrestricted decision if the type of products the American consumer expects to see in coming months is to be produced in sufficient time to meet the demands of the market. In this regard, Hauppauge supports the Dell/LG request that a universal waiver be granted by mid-summer.

II. Legal Justification for Grant of a Waiver

A waiver application "has an appropriate place in the discharge by an administrative agency of its assigned responsibilities."[1] "[S]alutary presumptions do not obviate the need for serious consideration of meritorious applications for waiver," and just because an agency has promulgated "rules of general application establishing the 'public interest' for a broad range of situations, does not relieve it of an obligation to seek out the 'public interest' in particular, individualized cases." *Id.* Such a "combination of a general rule and limitations" allows "administrative agencies [to] maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."[2]

For those reasons, waiver applications "stated with clarity and accompanied by supporting data are not subject to perfunctory treatment, but must be given a 'hard look,'" and, as a consequence, courts have insisted "on the agency's observance of its obligation to give

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1 *WAIT Radio v. Federal Communications Commission*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). affirmed *WAIT Radio v. FCC*, 459 F. 2d 1203 (DC Cir 1972), cert. den. 93 S. Ct. 461 (1972).

2 *Id.* at 1159

meaningful consideration to waiver applications"[3] -- most particularly when the underlying purpose of the rule is not served by its enforcement and where the public interest would clearly be served by its exception.[4] This is precisely such a case, as the Dell/LG Petition so aptly describes.[5]

In part, the issue arises most directly from subsection (i)(4) of §15.117:

> "The requirement to include digital television reception capability in new TV broadcast receivers does not apply to devices such as mobile telephones and personal digital assistants *where such devices do not include the capability to receive TV service on the frequencies allocated for broadcast television service.*" [6]

One arguable implication of this statement is that the all-channel requirement *would apply* where new mobile digital devices do utilize "frequencies allocated for broadcast television service." [7] The rule, however, does not say this.

The Commission's current position is that under Rule 15.117(b) television broadcast receivers -- stationary or mobile -- must be able to receive all channels allocated by the Commission to the television broadcast service: thus, since full power broadcast stations must broadcast in a digital format, and low-power television stations and translator stations may still broadcast in an analog format, in order for a receiver to receive *all channels* allocated by the

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3 *Id.* at 1157, 1159.

4 Id. at 1153, 1157.

5 See Dell/LG Petition at 3-4, 6-7.

6 At the time subsection (i)(4) was adopted, however, analog transmission was the norm and the Commission was making it clear that digital tuners needed to be included in receivers *already capable of analog reception.*

7 The Commission says as much in its *Second Report & Order* with respect to the requirement for digital tuners in analog equipment; *see, infra fn. 9,* at paragraph 26.

Commission to the television broadcast service, it must be able to receive both digital and analog signals.[8]

But, in adopting the policy expressed in Rule 15.117(i)(4) -- arguably requiring *analog* tuners in all portable devices such as cell phones, PDAs and computer net books and laptops which have the capability of receiving television signals on broadcast frequencies -- the Commission gave virtually no thought to the ramifications of this statement, merely reciting a single claim by two commenters in the rulemaking that the rule should *not apply to devices that cannot receive assigned broadcast frequencies*[9] - a point on which all can agree.

Applying Rule 15.117 to mobile devices simply makes no sense in today's all-digital world -- vigorously promoted, by the way, by the FCC itself -- and its application would decidedly not be "in the public interest" for this and a variety of other reasons.

For example, at a time where there has been concern about cell phone users consuming so much network bandwidth by watching videos through Internet connections, the FCC can alleviate spectrum congestion by encouraging live broadcast TV usage unhampered by outmoded requirements (analog TV tuners) that serve a very limited, if any, purpose in a mobile environment. Unlike video streaming via point-to-point Internet transmissions, digital television that is broadcast to mobile or handheld devices can deliver video on a point to multipoint basis,

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8 This view, however, misguidedly extends the fundamental objectives behind The All Channel Receiver Act, P.L. No. 87-529, 76 Stat. 150 ("ACRA"). As implemented in §15.117, these are best reflected in subsection (c):

> "On a given receiver, use of the UHF and VHF tuning systems shall provide approximately the same degree of tuning accuracy...with approximately the same expenditure of time and effort ...
>
> (2) UHF tuning controls and channel readout on a given receiver shall be comparable in size, location, accessibility and legibility to VHF controls and readout on that receiver."

9 *Second Report and Order, Requirements for Digital Television Receiving Capability*, FCC 05-190, ET Docket No. 05-24, released November 8, 2005, 20 FCC Rcd 18607 (at paragraph 26).

which means that hundreds of thousands of users can view the same video without any additional spectrum congestion.

Moreover, there are numerous other significant and market-distressing reasons why including an analog tuner in portable viewing devices such as cell phones, PDAs and laptops is a non-starter from both a manufacturing *and consumer* viewpoint:

- Analog receivers are power-hungry and thus a severe disadvantage in terms of battery life;
- Including an analog receiver in cell phones will increase their size, thus seriously constraining their marketability;
- The requirement to include an analog receiver will add unnecessary costs to each device;
- An analog receiver has much higher CPU requirements than digital: ATSC digital TV is broadcast at 19.2 Mbits/sec; analog comes out of the A/D converter at 216 Mbits/sec -- a ten-fold increase.

Mobile devices (cell phones, PDAs and laptops) should not have to be burdened with a spectrum hogging, power hungry analog tuner that no one wants or can use particularly where, as here, mobility renders reception of an analog video signal unsatisfactory from any realistic consumer perspective.[10]

In accordance with the National Broadband Plan, as proposed by the Commission itself, the country is becoming digital -- analog video transmission is becoming an anachronism. For example, the Open Mobile Video Coalition showcase on mobile television devices, using the ATSC M/H Mobile TV (A153) technology and scheduled for Washington DC on May 24, comprises tests and demonstrations in a 100% digital environment, with

- Participation by 7 full-time DTV television stations only;
- For the ATSC Mobile DTV technology only; and
- Using "device hardware ...of retail-ready production quality."

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[10] So far as Hauppauge is aware, there is no equivalent NTSC M/H standard.

Yet, once the ATSC M/H standard is finalized and implemented, under the FCC's current interpretation of the rule, all new television sets in more than 100 million American homes would soon have to be capable of receiving ATSC M/H transmissions -- even though those transmissions were developed purely for a mobile environment and would not provide a single additional benefit to home viewers.[11]

Even NTIA, in making available the much ballyhooed "converter boxes," did so both with and without "analog pass-through capability" (http://www.ezdigitaltv.com/Analog_Pass-Through.html). Significantly, the FCC never claimed that the *DTV only converters* violated the rule or ACRA, even though the converters were TV reception devices under Section 15.3(w) and many lacked any means of analog reception.

In the foregoing circumstances, and those described in the Dell/LG Petition, Commission refusal to grant the waivers requested would be arbitrary and capricious and an abuse of its discretion.

III. CONCLUSION

By abandoning the notion that portable devices which include digital TV receivers such as cell phones , PDAs and laptop computers must also include analog reception capability, the FCC will

- Encourage efficient spectrum use;
- Permit greater consumer access to emergency broadcasts and other important public safety programs; and
- Reduce the price and complexity, and increase the usefulness of portable devices of all kinds -- all to the benefit of the American Public.

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11 More than 70 full-power television broadcast stations are already transmitting video programming via ATSC M/H.

The only "policy" that would be satisfied by requiring an analog receiver in today's modern mobile digital world would be to allow reception of the few low power television and translator stations still operating using an antiquated transmission technology -- but, this cannot actually be accomplished in reality since there is no NTSC "mobile" capability. This policy is, in fact, ripe for reconsideration and the requested waivers will not only serve the public interest but promote the real objectives of the rule itself.

Prompt action is necessary to preserve the market for video capable cell phones, PDAs and laptop computers which the public is demanding in ever-increasing frequency. Hauppauge requests that it be granted a waiver of Rule 15.117 for all television receivers capable of mobile use by consumers.

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